



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 4, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory H. Hawley, Esq.
Maynard, Cooper & Gale, PC
1901 Sixth Avenue North
Birmingham, AL 35203-2618

RE: MUR 4943
(formerly Pre-MUR 376)
State Democratic Executive Committee of
Alabama and Anthony J. Fant, as treasurer

Dear Mr. Hawley:

On November 2, 1999, the Federal Election Commission ("the Commission") found that there is reason to believe that your clients, the State Democratic Executive Committee of Alabama and Anthony J. Fant, as treasurer, violated 2 U.S.C. §§ 434(a)(4)(A)(i)-(iv), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

Please have your clients complete the enclosed designation of counsel form for our file. This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Seth H. Row, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis
Proposed Conciliation Agreement
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: State Democratic Executive MUR: 4943
Committee of Alabama
and Anthony J. Fant, as Treasurer

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. LAW

The Federal Election Campaign Act of 1971, as amended, ("the Act") requires political committees to file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). In a non-election year, political committees other than authorized committees of a candidate must file "a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following year." 2 U.S.C. § 434(a)(4)(A)(iv). In any calendar year in which a regularly scheduled election is held, political committees other than authorized candidate committees must file quarterly reports no later than the 15th day after the last day of each calendar quarter, except for the quarter ending on December 31, in which case the report must be filed on or by January 31 of the following year. 2 U.S.C. § 434(a)(4)(A)(i). Additionally, the Act requires a political committee to file a pre-election report no later than the 12th day before any primary or general election if a political committee makes a contribution to or an expenditure on behalf of a candidate for federal office twenty days or more prior to a primary or general election. 2 U.S.C. § 434(a)(4)(A)(ii). The Act further

requires political committees to file, in any calendar year in which a regularly scheduled election is held, a post-general election report no later than the 30th day after the general election in question. 2 U.S.C. § 434(a)(4)(iii).

III. FACTS

Respondent State Democratic Executive Committee of Alabama ("SDECA") is a political committee within the meaning of 2 U.S.C. § 431(4); specifically, SDECA is an qualified unauthorized party committee. Respondent Anthony J. Fant is the treasurer of SDECA.¹

SDECA was required to file its 1997 Year-End Report on or by January 31, 1998. See 2 U.S.C. § 434(a)(4)(A)(iv). By written notice dated December 29, 1997 the Commission notified SDECA that its 1997 Year-End Report was due on or by January 31, 1998. On February 23, 1998, the Commission sent SDECA a non-filer notice instructing SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. SDECA filed its 1997 Year-End Report on March 24, 1998, 52 days after the compulsory filing date.²

SDECA was required to file its 1998 April Quarterly Report on or by April 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). By written notice dated March 20, 1998, the Commission notified SDECA that its 1998 April Quarterly Report was due on April 15, 1998. On May 7, 1998, the Commission sent SDECA a non-filer notice instructing SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action

¹ John D. Saxon was the treasurer of SDECA during the events in question.

² SDECA's Executive Director, Giles Perkins, signed a cover letter to this submission asserting that SDECA's records indicated that the 1997 Year-End Report had been filed with the Commission in January, 1998, and that SDECA had a return receipt indicating this. Mr. Perkins asserted that a copy of this receipt would be forwarded to the Commission under separate cover. No such receipt was received by the Commission.

regarding the late report. On June 1, 1998, a Reports Analysis Division ("RAD") analyst left a message for SDECA's Executive Director, Giles Perkins, asking SDECA to file the April Quarterly Report, and advising him that failure to do so may result in legal action by the Commission. SDECA did not respond to the analyst's message.

SDECA was required to file its 1998 July Quarterly Report no later than July 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). By written notice dated June 19, 1998, the Commission notified SDECA that its 1998 July Quarterly Report was due on July 15, 1998. On August 7, 1998, the Commission sent SDECA a non-filer notice instructing SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. On August 28, 1998, a RAD analyst called SDECA and left a message for Mr. Perkins with Jessica Miller, who represented herself as the Assistant Treasurer, asking SDECA to file its April and July Quarterly Reports, and advising him that failure to do so may result in legal action by the Commission. SDECA did not respond to the analyst's message.

SDECA was required to file its 1998 October Quarterly Report by October 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). By written notice dated September 18, 1998, the Commission informed SDECA that its 1998 October Quarterly Report was due on October 15, 1998. On November 4, 1998, the Commission sent SDECA a non-filer notice instructing SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. On December 1, 1998, a RAD analyst called John Saxon, who was then the treasurer of SDECA. Mr. Saxon returned the analyst's call on December 2, 1998, and told the analyst that SDECA staff had informed him that the reports had been filed with the Commission. Mr. Saxon also asserted that the 1997 Year-End Report had encountered the same problem, and claimed that SDECA had been able to prove that the report

had been filed on time. The analyst advised Mr. Saxon that no reports had been filed for 1998, that Non-Filer notices were on the public record for SDECA's missing reports, and that SDECA should file the missing reports and copies of the certified mail receipts. Mr. Saxon stated that he would make sure the reports were re-sent, but that he trusted his staff. No reports were submitted by SDECA in response to the analyst's call, and SDECA did not respond further.

SDECA was required to file its 1998 30-Day Post-General Election Report by December 3, 1998. See 2 U.S.C. § 434(a)(4)(A)(iii). By written notices dated September 30, 1998, and November 5, 1998, respectively, the Commission informed SDECA that its 1998 Post-General Election Report was due on December 3, 1998. On January 6, 1999, the Commission sent SDECA a non-filer notice instructing SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. On January 29, 1999, a RAD analyst called Mr. Saxon and left a message with his secretary about the missing reports. Mr. Saxon's secretary said that she would contact the preparer of reports. The analyst told her that Mr. Saxon had previously stated that this person had filed the reports, and suggested to Mr. Saxon's secretary that SDECA verify the mailing address of the Commission and re-mail the missing reports. The analyst left a message for Mr. Saxon to call the analyst back. SDECA did not respond to the analyst's message.

SDECA was required to file its 1998 Year-End Report by January 31, 1999. See 2 U.S.C. § 434(a)(4)(A)(i). By written notice dated December 30, 1998, the Commission informed SDECA that its 1998 Year-End Report was due on January 31, 1999. On February 16, 1999, a RAD analyst called Mr. Saxon again about all of the missing reports. Mr. Saxon stated that he was told that the missing reports had been mailed with return receipts the previous week. The analyst told Mr. Saxon that no reports had been received. Mr. Saxon also stated that he was no

longer the treasurer, and that there was a new treasurer for the committee. The analyst advised him that no treasurer change had been reported to the Commission. On March 2, 1999, the Commission sent SDECA a non-filer notice instructing SDECA to file the Year-End Report immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. SDECA did not respond to this notice.

On March 29, 1999, a RAD analyst called SDECA's office and left a message for Ms. Miller. On March 30, 1999, Sara Jane Tackett of SDECA called the analyst and stated that she had been assured that the missing reports and return receipts had been mailed to the Commission. On April 5, 1999, Ms. Tackett called the analyst and stated that contrary to her previous assertion, she had concluded that SDECA had not filed any of the required reports for 1998. She stated that she had prepared the reports for SDECA during the 1996 election cycle, and had returned to SDECA to work on the 2000 election cycle, and would be filing the reports for 1998. She stated that the person whose task it was to prepare the reports for 1998 had been fired, and that SDECA had contacted counsel.

On April 5, 1999 counsel for SDECA submitted a sua sponte admission that SDECA had failed to file any reports covering calendar year 1998. Counsel asked to enter into conciliation in connection with SDECA's apparent violations of the Act. Counsel stated that Sara Jane Tackett, who had prepared SDECA's reports for the 1996 cycle, had retired at the end of 1996. Counsel stated that during the first part of 1997 SDECA's reporting duties were handled by a Mr. Rhodes, who left SDECA in the middle of 1997, whereupon those duties were transferred to another employee, Jessica Miller, who began working at SDECA in June, 1997. Counsel stated that on several occasions during 1998 Ms. Miller told SDECA's treasurer and executive director, Giles Perkins, that SDECA's 1998 disclosure reports had been filed with the Commission on time.

The sua sponte submission stated that in early 1999, after staff from the Reports Analysis Division ("RAD") contacted the executive director and treasurer, Mr. Perkins and the treasurer asked Ms. Miller about the reports. Counsel stated that Ms. Miller asserted at that time that reports for 1998 had been filed on time, stated that she had duplicate copies of the reports at her home, and promised that she would send those copies to the Commission. After being pressed by staff from RAD, Mr. Perkins apparently demanded to see copies of the reports, at which time Ms. Miller admitted that no reports for 1998 had been submitted to the Commission. Counsel enclosed a statement signed by Ms. Miller which states that her duties at SDECA included preparing FEC reports, and that she failed to prepare the reports. Counsel stated that Ms. Tackett had returned to compile reports for 1998, and that Ms. Miller had resigned her position.

On April 16, 1998 SDECA filed its 1998 April and July Quarterly Reports, and an amended 1997 Year-End Report. SDECA filed its 1998 October Quarterly Report on April 26, 1999, its 1998 Post-General Election Report on April 30, 1999, and its 1998 Year-End Report on May 3, 1999.

IV. ANALYSIS

Pursuant to the Act, SDECA was required to file its 1997 Year-End Report on or by January 31, 1998. See 2 U.S.C. § 434(a)(4)(A)(iv). SDECA filed its 1997 Year-End Report on March 24, 1998, 52 days after the compulsory filing date. SDECA's 1997 Year-End Report disclosed receipts totaling \$217,107.32 and disbursements totaling \$235,106.68.

SDECA was required to file its 1998 April Quarterly Report on or by April 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). SDECA filed its 1998 April Quarterly Report on April 16, 1999, 366 days after the compulsory filing date. SDECA's 1998 April Quarterly Report disclosed receipts totaling \$231,317.95 and disbursements totaling \$215,057.65.

SDECA was required to file its 1998 July Quarterly Report no later than July 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). SDECA filed its 1998 July Quarterly Report on April 16, 1999, 275 days after the compulsory filing date. SDECA's 1998 July Quarterly Report disclosed receipts totaling \$132,352.25 and disbursements totaling \$147,680.94.

Because SDECA made two contributions to a candidate for federal office during the second quarter of 1998, and these contributions were reportedly made more than twenty days prior to the June 2, 1998 primary, SDECA was required to file a Pre-Primary Report for the June 2, 1998 primary on or by May 21, 1998. See 2 U.S.C. § 434(a)(4)(A)(ii). Although the contributions are listed in Schedule B of SDECA's itemized disbursements for the second quarter of 1998, SDECA did not file a Pre-Primary Report. Given the failure to file, the Commission segregated, in conformity with 2 U.S.C. § 434(a)(4)(A)(ii), total receipts and disbursements for the 1998 second quarter (totaling \$132,352.25 and \$147,680.94, respectively) according to the date assigned to the transactions reported. Thus, receipts and disbursements for the second quarter reporting period between April 1, 1998 to May 13, 1998 (the "Pre-Primary" reporting period) were calculated separately from those dated between May 14, 1998 to June 30, 1998 (the "Post-Primary" reporting period). The segregated analyses yielded receipts for the 1998 Pre-Primary period totaling \$102,889.05 and disbursements totaling \$111,955.64 as well as receipts for the 1998 Post-Primary period totaling \$29,463.20 and disbursements totaling \$35,725.30.

SDECA was required to file its 1998 October Quarterly Report by October 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). SDECA filed its 1998 October Quarterly Report on April 26, 1999, 193 days after the compulsory filing date. SDECA's 1998 October Quarterly Report disclosed receipts totaling \$217,058.85 and disbursements totaling \$213,157.83.

SDECA was required to file its 1998 30-Day Post-General Election Report by December 3, 1998. See 2 U.S.C. § 434(a)(4)(A)(iii). SDECA filed its 30-Day Post General Election Report on April 30, 1999, 148 days after the compulsory filing date. SDECA's 1998 30-Day Post-General Election Report disclosed receipts totaling \$564,463.20 and disbursements totaling \$562,035.45.

SDECA was required to file its 1998 Year-End Report by January 31, 1999. See 2 U.S.C. § 434(a)(4)(A)(i). SDECA filed its 1998 Year-End Report on May 5, 1999, 92 days after the compulsory filing date. SDECA's 1998 Year-End Report disclosed receipts totaling \$132,665.67 and disbursements in the amount of \$125,689.47 for the applicable period.

SDECA was given ample warning of the due dates for the above-mentioned reports, and was given ample and repeated warnings that failure to file the reports might lead to enforcement action by the Commission. Therefore, there is reason to believe that the State Democratic Executive Committee of Alabama and Anthony J. Fant, as treasurer, violated 2 U.S.C. §§ 434(a)(4)(A)(i)-(iv).